KERAJAAN NEGERI SARAWAK & ORS

v.

BASNOL ABOL (SI MATI) & ORS AND OTHER APPEALS

COURT OF APPEAL, KUALA LUMPUR
ABDUL HAMID MOHAMAD JCA
MOHD NOOR AHMAD JCA
PS GILL JCA
[CIVIL APPEAL NOS: Q-01-8-2002, Q-01-9-2002 & Q-01-10-2002]
29 NOVEMBER 2002

LAND LAW: *Alienation and incidents - Alienation of State land - Agreement to issue documents of title upon completion of agricultural scheme in absence of payment of premium - Whether such a discretion solely rests in Majlis Mesyuarat Kerajaan Negeri - Land Code (Sarawak), s. 13 - Whether subsequent imposition of premiums tantamount to breach of agreement*

The 3rd defendant, being the director of agriculture, signed an agreement on behalf of the 1st defendant with the 24 plaintiffs regarding an agricultural scheme. It was agreed between the parties that the plaintiffs would be granted a loan and issued with the documents of title for the respective lots upon full re-payment of the loan and their successful participation in the said scheme. Subsequently, the plaintiffs were informed that they would have to pay premiums in relation to the alienation of the said lots to them as prescribed by s. 13 of the Land Code (Sarawak). The plaintiffs refused to pay the said premium and refused to apply to the Majlis Mesyuarat Kerajaan Negeri for exemption of the said premium. They commenced separate actions in the High Court against the defendants, arguing that the imposition of the said premium tantamount to a variation of the agreement and therefore constituted a breach or repudiation.

The judicial commissioner consolidated the plaintiffs' action and heard them together. Except for three suits ('the excepted suits'), decision was given in the favour of the remaining 21 plaintiffs. Before this court, the defendants appealed against the decision involving the 21 plaintiffs and the plaintiffs appealed regarding the excepted suits.

Held:

Per Mohd Noor Ahmad JCA

[1] The lots occupied by the plaintiffs were State land. And, the obligation to issue the documents of title to the plaintiffs undertaken by the first defendant *vide* cl. 7(b) of the agreement amounted to an alienation of State land. (p 261 e)

[2] The alienation of State land could only be exercised in accordance with s. 13 of the Land Code. Accordingly, the superintendent of land and survey is required to alienate the State land in consideration of an annual rent, and unless exempted, a premium. The power to exempt the payment of premium vests solely with the Majlis Mesyuarat Kerajaan Negeri, which is a separate entity from the State government. (pp 261 f & 262 b)

[3] In concluding that the plaintiffs were exempted from paying the premium due to the undertaking given by the 1st defendant, judicial commissioner had erred as this tantamounts to adding something in the clause which was not there. Such an inclusion of intrinsic evidence was not permissible under s. 92 of the Evidence Act 1950. Further, it amounted to an usurpation by the courts of powers exclusively vested in the Majlis Mesyuarat Kerajaan Negeri and therefore would be *ultra vires* the provisions of s. 13(1)(c) of the Land Code. (p 262 h)

[4] The imposition of the premium by the defendants as required by law did not amount to a variation of the terms in the agreement. As such, the defendants did not breach or repudiate the agreement. (p 263 d)

[Defendants' appeal allowed with costs; plaintiffs' appeal regarding excepted suits dismissed with costs.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Defendan ketiga, yang merupakan pengarah pertanian, telah menandatangani suatu perjanjian bagi pihak defendan pertama dengan 24 plaintif berkenaan dengan suatu skim pertanian. Telah dipersetujui antara pihak-pihak bahawa plaintif akan diberi suatu pinjaman dan dokumen hakmilik akan dikeluarkan untuk lot-lot tanah berkenaan setelah penyelesaian penuh pinjaman tersebut dan mereka menunjukkan kejayaan yang memuaskan dalam skim tersebut.

Kemudian, plaintif telah diberitahu bahawa mereka perlu membayar premium untuk pemberimilikan tanah lot-lot tanah tersebut kepada mereka seperti yang diperuntukkan oleh s. 13 Kanun Tanah (Sarawak). Kesemua 24 plaintif enggan membayar premium tersebut dan enggan memohon kepada Majlis Mesyuarat Kerajaan Negeri untuk pengecualian premium. Mereka telah memulakan tindakan berasingan di Mahkamah Tinggi terhadap pihak defendan, sambil berhujah bahawa pengenaan premium adalah merupakan suatu variasi kepada perjanjian di atas dan merupakan satu kemungkiran atau penolakan.

Pesuruhjaya kehakiman menyatukan tindakan pihak plaintif dan membicarakannya secara sekaligus. Kecuali tiga guaman ('guaman terkecuali'), keputusan diberikan berpihak kepada 21 plaintif. Di hadapan mahkamah ini,

pihak defendan telah membuat rayuan terhadap keputusan yang melibatkan 21 plaintif tersebut dan plaintif telah merayu berkenaan guaman terkecuali.

Diputuskan:
Oleh Mohd Noor Ahmad HMR

[1] Lot-lot tanah yang didiami plaintif merupakan tanah Kerajaan. Dan, kewajipan untuk mengeluarkan dokumen hakmilik kepada plaintif yang diakujanji oleh defendan pertama melalui kl. 7(b) perjanjian tersebut merupakan suatu pemberimilikan tanah hak kerajaan.

[2] Pemberimilikan tanah hak kerajaan hanya boleh dibuat menurut s. 13 Kanun Tanah. Oleh yang demikian, penguasa tanah dan ukur diwajibkan memberimilik tanah kerajaan setelah menerima balasan dalam bentuk sewa tahunan dan, jika dikecualikan, suatu premium. Kuasa untuk mengecualikan pembayaran premium khususnya terletak pada Majlis Mesyuarat Kerajaan Negeri, yang merupakan suatu entiti berasingan daripada Kerajaan Negeri.

[3] Dengan memutuskan bahawa plaintif dikecualikan daripada membayar premium disebabkan oleh akujanji yang diberikan oleh defendan pertama, pesuruhjaya kehakiman telah tersilap kerana ini sama seperti menambah sesuatu dalam klausa tersebut yang sememangnya tiada. Tambahan pula, ia merupakan suatu perampasan kuasa oleh mahkamah yang secara ekslusifnya dipunyai oleh Majlis Mesyuarat Kerajaan Negeri dan oleh itu akan menjadi ultra vires peruntukan di bawah s. 13(1)(c) Kanun Tanah.

[4] Pengenaan premium oleh pihak defendan seperti yang diperuntukkan oleh undang-undang tidak merupakan suatu variasi kepada terma-terma perjanjian. Oleh itu, pihak defendan tidak melanggari atau menolak perjanjian tersebut.

[Rayuan defendan dibenarkan dengan kos; rayuan plaintif berkenaan guaman terkecuali ditolak dengan kos.]

Case(s) referred to:
Kerajaan Negeri Selangor v. Maraputra Sdn Bhd [1992] 1 CLJ 441; [1992] 2 CLJ (Rep) 630 ***(refd)***
Lesco Development Corpn Sdn Bhd v. Yap Chong Lan [1984] 2 MLJ 123 ***(refd)***
Sidek Hj Muhamad & Ors v. The Government Of The State Of Perak & Ors [1982] CLJ 244; [1982] CLJ (Rep) 321 ***(refd)***
Stamford Holdings Sdn Bhd v. Kerajaan Negeri Johor & Ors [1995] 3 CLJ 114 ***(refd)***
Steven Phoa Cheng Loon v. Highland Properties Sdn Bhd [2000] 4 CLJ 508 ***(refd)***
Stiles v. Galinski, Nokes v. Islington Corpn (No 2) [1904] 1 KB 615 ***(refd)***
The Government of Negeri Sembilan & Anor v. Yap Chong Lan & Ors [1984] 2 CLJ 150; [1984] 1 CLJ (Rep) 144 ***(refd)***

Legislation referred to:
Land Code (Sarawak), ss. 13(1)(c), 44
National Land Code, s. 48

Other source(s) referred to:
Kim Lewison QC, *Interpretation of Contracts*, 2nd edn, p 73, para 3.04

(Civil Appeal No: Q-01-8-2002)
For the appellants - Thomas Akin Jelimin (Joseph Chioh)
For the 1st to 12th respondents - Fabian AH Lim (Lim Heng Choo); M/s Lim & Lim
For the 13th to 19th respondents - Makanda Singh Sandhu; M/s MS Sandhu & Co
For the 20th to 21st respondents - John Trang; M/s Antalai, Trang & Co

(Civil Appeal No: Q-01-9-2002)
For the appellants - Fabian AH Lim (Lim Heng Choo); M/s Lim & Lim
For the respondents - Thomas Akin Jelimin (Joseph Chioh)

(Civil Appeal No: Q-01-10-2002)
For the appellants - Makanda Singh Sandhu; M/s MS Sandhu & Co
For the respondents - Thomas Akin Jelimin (Joseph Chioh)

[Appeal from High Court, Miri; Suit Nos: 22-49-97, 22-44-97, 22-45-97; 22-46-97, 22-47-97, 22-48-97, 22-50-97, 22-51-97, 22-52-97, 22-53-97, 22-54-97, 22-57-97, 22-28-97, 22-29-97, 22-30-97, 22-31-97, 22-32-97, 22-55-97, 22-04-98 & 22-46-96]

Reported by M Maheswaran

JUDGMENT

Mohd Noor Ahmad JCA:

The learned Judicial Commissioner consolidated all the 24 actions and heard them together. At the end of the hearing, except for three suits nos. 22-62-97 (MR), 22-63-97 (MR) and 22-64-97(MR) the learned Judicial Commissioner granted a declaration in favour of the plaintiffs that they are entitled to be issued with documents of title to their respective coconut and padi lots and ordered damages *in lieu* of the issuance of the documents of title, to be assessed by the deputy registrar with costs. However, the excepted suits were dismissed with costs. In respect of the 21 actions the defendants appealed (re civil appeal no. Q-01-8-2002) and with regard to the excepted suits the plaintiffs appealed (re civil appeal no. Q-01-9-2002 for suit no. 22-62-97 (MR) and civil appeal no. Q-01-10-2002 for suits nos. 22-63-97 (MR) and 22-64-97 (MR)). All the appeals were heard together.

It is not disputed that:

(1) The plaintiffs other than the plaintiffs in the excepted suits were and are still the original settlers of a youth settlement scheme known as the the Pujut/Lopeng Settlement Scheme in the Fourth Division, Miri (hereinafter referred to as 'the Scheme') The Scheme was set up by the 1st defendant with the primary objective of settling rural secondary school leavers and of educating them to undertake economic and scientific farming. The Scheme was under the control and supervision of the Agricultural Department. Before joining the Scheme they underwent training at a farmers' institute organised by the department, and thereafter were selected to participate in the Scheme. Upon joining the Scheme they lived communally and toiled the land 'on gotong royong' basis. Initially they cleared the swampy land of undergrowth, trees and shrubs and thereafter constructed drains and bunds and hand-ploughed the land for padi cultivation.

(2) On or about 24 June 1975 each of them entered into a separate deed of agreement with the 1st defendant (hereinafter referred to as 'the agreement') containing similar terms and conditions. The agreement was signed for and on behalf of the 1st defendant by the 3rd defendant. Under the agreement each plaintiff was given a loan of RM6,800 for subsistence and for the erection of a dwelling house. The loan was to be repaid by monthly instalments commencing from the eighth year of the settling period. The agreement also contained various undertakings by the plaintiffs, *inter alia*, relating to their active participation in the Scheme, the repayment of the loan and the sale of the farm produce.

(3) Clause 7 of the agreement on which the plaintiffs relied provides:

> 7(a) Subject to the provisions of Clause 3(b), the Government will cause to be issued to the Borrower in the third year of the settling period a Temporary Occupation Licence each in respect of:
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> (i) the coconut lot containing ten (10) acres more or less in the Scheme; and
>
> (ii) the padi lot containing three (3) acres more or less in the Scheme.
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> (b) At the expiration of the seventh (7) year after the settling period have been completed (but not earlier) and if the Borrower shall have fully repaid the loan to the Government, the Government will cause to be issued to the Borrower, a document of title by way of lease for a term of sixty (60) years in respect of the coconut lot and the padi lot referred to in subparagraph (a) above.

The expression 'the settling period' is defined in the agreement to mean the settling period of eight years required of a settler under the Scheme. Under the clause, subject to the full repayment of the loan by the settlers the Government undertakes to cause to be issued to them the documents of title by way of sixty-year lease to the respective lots.

(4) The plaintiffs had complied with all the terms and conditions of the agreement including the repayment of the loan, and had successfully participated in the Scheme. They had been issued with the temporary occupation licences in respect of the coconut lot and padi lot but were not renewed after their expiry. However, by the letter of 27 March 2001 from the state legal officer to the plaintiffs' solicitors they were informed that the documents of title to their respective lots would be issued in accordance with the agreement but the alienation of the land had to be carried out in accordance with the provisions of s. 13 of the Land Code. And in the letter of 9 May 2002 to each of them the 2nd defendant informed them that the alienation was subject to certain conditions including the payment of premium at the rate of 30 per cent of the value of the land, which were calculated to be in the range of RM2.187 million to RM2.776 million in respect of the coconut lot and RM655,560 to RM990,660 in the case of the padi lot. They not only refused to pay the premium but also refused to apply to the Majlis Mesyuarat Kerajaan Negeri for exemption on the payment of the premium under the provisions of s. 13(1)(c) of the Land Code.

(5) In suit no. 22-62-97 (MR), the plaintiff took over his brother's place in the Scheme after the brother's death. The Agricultural Department was aware of these facts. After the plaintiffs death his wife took over and continued with the action. No notice had been issued to the plaintiff and his wife to vacate the land in the Scheme after the brother's death. The repayment by instalments of the loan granted to the brother made by the plaintiff was accepted. Therefore, the plaintiff claimed that he was led to believe by the conduct of the defendants that he had been accepted as a settler in the Scheme and that the defendants are estopped from denying him of the benefits under the agreement.

(6) In respect of suits nos. 22-63-97 (MR) and 22-64-97 (MR) the plaintiffs were selected as new settlers to the Scheme by virtue of a letter to each of them by a Divisional Agricultural Officer dated 18 September 1985. They were given the opportunity to participate in the Scheme on a trial basis for a period of one year and in the event of successful completion, they would be required to enter into a deed of agreement with the 1st defendant. Each of them were allocated a plot of land. They successfully

participated in the Scheme and were successfully assessed. Therefore, they claimed that, notwithstanding the absence of a deed of agreement, they had entered into a binding agreement with the 1st defendant by exchange of letters in the terms of the letter of 18 September 1985 and that they have legitimate expectation to be issued with the documents of title to their respective lots in the same manner as the other settlers who had executed the agreement with the 1st defendant.

The learned counsel for the plaintiffs contended that the averment in para. 6.2 of the reamended statement of defence amounted to an admission by the defendants that the plaintiffs are entitled to be issued with the documents of title. Although the issuance of the documents of title amounts to alienation of State land under s. 13 of the Land Code, however, having regard to cl. 7(b) of the agreement, no premium should be payable. The payment of premium was never contemplated by the parties. Had the 1st defendant intended to impose the premium for the alienation of the lots it would have expressly provided for it in the agreement. Therefore, the imposition of the premium would tantamount to a variation of the term of the agreement and such imposition as a condition for the performance of its undertaking under cl. 7(b) of the agreement constitutes a breach or repudiation of the agreement by the 1st defendant.

On the contrary, the learned senior state legal officer asserted that as all the lots occupied by the plaintiffs are State land the reference to the issuance of documents of title has to be construed as alienation of State land. The alienation of State land can be carried out only in accordance with the provision of the Land Code and not otherwise. Under s. 13 of the Land Code the alienation is subject to the payment of an annual rent and, unless exempted, the payment of a premium. The fact that cl. 7(b) of the agreement is silent on the requirement to pay premium does not entitle the plaintiffs to be exempted from the payment thereof. The expression '... will cause to be issued to the borrower, a document of title by way of lease ...' in the clause clearly implies that the alienation will have to be done only through the Director of Lands and Surveys in conformity with the requirements of the Land Code, including the payment of premium, unless exempted. To construe otherwise would have the effect of giving the clause an interpretation repugnant to the provisions of s. 13(1) of the Land Code. Hence, the 1st defendant is not in breach of the agreement for the imposition of the requirement to pay the premium. He cited the Federal Court cases of *Sidek bin Hj Muhamad & 461 Ors v. The Government Of The State Of Perak & Ors* [1982] CLJ 244; [1982] CLJ (Rep) 321 and *The Government Of Negeri Sembilan & Anor v. Yap Chong Lan & Ors* [1984] 2 CLJ 150; [1984] 1 CLJ (Rep) 144 and *Lesco Development Corpn Sdn Bhd v. Yap Chong Lan* [1984] 2 MLJ 123 in support thereof.

The learned Judicial Commissioner held that although the Director of Agriculture signed the agreement it was made with the authority of the 1st defendant and hence, the defendants are bound by the terms thereof. The undertaking to cause the issue of the documents of title in cl. 7(b) of the agreement binds the 1st defendant because the 1st defendant has the authority or was acting within the scope of its jurisdiction to give such an undertaking since under the Land Code the entire property and control of State land is vested solely in the Government, that is to say, the 1st defendant. Having resorted to the *Concise Oxford Dictionary*, 9th edn on the word 'cause' and fortified by the statement of Lord Alverstone in *Stiles v. Galinski, Nokes v. Islington Corpn (No. 2)* [1904] 1 KB 615 on the use of the word 'cause', the leaned Judicial Commissioner opined that the undertaking by the 1st defendant under cl. 7(b) of the agreement that 'it will cause to be issued to the borrower a document of title' can be interpreted to mean that the 1st defendant will take such steps as reasonably necessary or expedient to see that the documents of title are issued to the plaintiffs. In other words, it is the duty of the defendants to deal with all the necessary requirements under the Land Code, including the question of premium, to see that the plaintiff will be issued with the documents of title to their respective lots. In giving such undertaking in the agreement it can be deemed that the 1st defendant had exempted the plaintiffs from the payment of premium for the alienation of the lots. Such interpretation is consistent with the purpose for which the Scheme was established. The learned Judicial Commissioner was also of the view that the requirement to get the exemption on the payment of the premium from the Majlis Mesyuarat Kerajaan Negeri under the Land Code has to be initiated by the defendants in order to honour their obligation to the plaintiffs under the agreement. Therefore, the learned Judicial Commissioner held that the imposition of the premium which could have been waived is contrary to the undertaking under cl. 7(b) of the agreement. Thus, the plaintiffs in the 21 actions have the right to be issued with the documents of title to their respective lots without any payment of premium.

This appeal revolves on the construction of cl. 7(b) of the agreement which is pivoted by the relevant provisions of the Land Code. Parties do not make contract in a vacuum. They always negotiate against the background of the law. It is therefore, reasonable to suppose that they take into account the general law in reaching their ultimate consensus. And accordingly, the proper construction of their agreement is properly influenced by the legal background against which it is made (see the *Interpretation of Contracts*, 2nd edn. by Kim Lewison, Q.C. para. 3.04 at p. 73). To my mind, the legal background is this. The law governing the agreement, in particular cl. 7(b) on the issuance of the documents of title is the Land Code. The relevant provisions of the Land Code are ss. 13(1) and 44.

Section 13(1) provides:

> 13(1) Subject to the direction of the Minister under subsection (1A) of section 3, the Director may alienate State land, other than Native Customary Land; and
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> (a) in perpetuity or for such terms as may be fixed by rules made under this Code for the respective classes of land referred to in such rules;
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> (b) in consideration of the payment of an annual rent;
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> (c) in consideration, unless the Majlis Mesyuarat Kerajaan Negeri thinks fit to exempt therefrom in any particular case, of the payment of a premium, and where the alienation has been made in consideration of the payment of a premium, the amount of the premium shall be stated. The payment of the premium, if any, may be made either by a single payment or by instalments over a period not exceeding ten years as may be determined by the Superintendent;

And section 44 states:

> 44. No person shall acquire any right or title against the Government by virtue of any adverse possession, unlawful occupation or occupation under temporary licence, and no right or title shall be acquired against the Government, save such right or title as may be lawfully granted under this Code.

The lots occupied by the plaintiffs are State land. The obligation to issue the documents of title to the plaintiffs undertaken by the 1st defendant under cl. 7(b) of the agreement amounted to alienation of the State land. The alienation of State land can only be done in accordance with the Land Code (per Raja Azlan Shah (CJ Malaya) (as His Highness then was) in the Federal Court case of *Sidek bin Haji Muhamad & 461 Ors v. The Government Of The State Of Perak & Ors*, *supra*). In that case His Lordship states at pp. 324-325 (Rep):

> Assuming what the State Director of Lands and Mines said in the Utusan Melayu is true, can he bind the State Government? The short answer is that he had no authority to bind the government to alienate State land to the settlers. For this a formal resolution of the State Authority is necessary. The want of authority was clearly pleaded, and is a formidable obstacle to any contention that the appellants' claim lay in estoppel.
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> The only way to obtain State land is by way of the National Land Code. The case falls within the broad principle that 'where an Act creates an obligation, and empowers the obligation in a specified manner, we take it as a general rule that performance cannot be enforced in any other manner": (see *Doe d. Rochester (Bp.) v. Bridges* 109 ER 1001, 1006). Likewise here in the case of landless. It cannot have been intended by Parliament in enacting the National Land Code that every person who was in need of land should be able to sue

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> the government for it or to take the law into his own hands for the purpose. So the courts must, for the sake of law and order, take a firm stand. We can sympathise with the plight in which the appellants find themselves. But we can go no further. They must make their appeal for help elsewhere, not to us.

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The decision was followed by the Federal Court in *Government Of Negeri Sembilan & Anor v. Yap Chong Lan & Ors* and *Lesco Development Corp Sdn Bhd v. Yap Chong Lan supra*. That being the case, under s. 13(1) of the Land Code the Director of Lands and Surveys is required by law to alienate the State land in consideration of an annual rent and, unless exempted, a premium. The power to exempt the payment of the premium vests solely with the Majlis Mesyuarat Kerajaan Negeri which is a separate entity from the State Government, that is to say, the 1st defendant. The State Government which is not synonymous with the Majlis Mesyuarat Kerajaan Negeri has no power to grant the exemption (see *Stamford Holdings Sdn Bhd v. Kerajaan Negeri Johor & Ors* [1995] 3 CLJ 114 and *Steven Phoa Cheng Loon v. Highland Properties Sdn Bhd* [2000] 4 CLJ 508), nor can the State Government bind the Majlis Mesyuarat Kerajaan Negeri in respect of the exemption of the premium. So are the 2nd and the 3rd defendants. Hence, at the most the obligation of the 1st defendant under cl. 7(b) of the agreement is to alienate the lots to the plaintiffs, which it had agreed to do, through the Director of Lands and Surveys by the issuance of the documents of title to the plaintiffs by way of a lease for a term of sixty (60) years subject to the payment of annual rent and unless exempted by the Majlis Mesyuarat Kerajaan Negeri, the premium. Such obligation cannot be construed in any other way otherwise it will be contrary to law. Moreover, the general rule is that statute overrides contractual provisions (see *Kerajaan Negeri Selangor v. Maraputra Sdn Bhd* [1992] 1 CLJ 441; [1992] 2 CLJ (Rep) 630).

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Therefore, with due respect, the learned Judicial Commissioner erred when he concluded that in giving such undertaking in the agreement it can be deemed that the 1st defendant had exempted the plaintiffs from the payment of premium for the alienation of the lots. In other words, the learned Judicial Commissioner had added something in the clause which was not there. Such conclusion tantamounts to the inclusion of intrinsic evidence which is not permissible under s. 92 of the Evidence Act 1950. Further, the conclusion also tantamounts to a waiver of the payment of premium, as such, it tantamounts to a usurpation by the court of powers exclusively vested in the Majlis Mesyuarat Kerajaan Negeri and therefore, would be *ultra vires* the provision of s. 13(1)(c) of the Land Code.

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With regard to s. 44 of the Land Code, the section is in *pari materia* with s. 48 of the National Land Code and in relation thereto the Federal Court held in *Government Of Negeri Sembilan & Anor v. Yap Chong Lan & Ors* and *Lesco Development Corpn Sdn Bhd v. Yap Chong Lan, supra* at p. 128:

> Section 48 prescribes that no title to State land shall be acquired by possession, unlawful occupation or occupation under any licence for any period whatsoever ... . These statutory provisions by themselves would appear to provide a complete answer to and inhibit the interpolation of any equity in regard to the respondents' claim. There can be no intervention of equity in the face of specific legislative provisions of the Code.

By the section and the decision the door is sealed for the plaintiffs to acquire title to the lots in any other way except through the provisions of s. 13(1)(c) of the Land Code.

Therefore, the imposition of the premium by the defendants as required by law does not amount to a variation of the terms in the agreements, as such, there is no breach or repudiation of the agreement on the part of the defendants.

In conclusion, with respect, the declaratory order made by the learned Judicial Commissioner cannot be justified and upheld, in which event, the order on damages cannot stand. Therefore, the appeals are allowed with costs here and below. The orders of the learned Judicial Commissioner are hereby set aside.

With regard to the appeals in the excepted suits by reason of my decision in the 21 actions, the appeals are dismissed with costs. The deposits are to be paid towards taxed costs.

My learned brothers Abdul Hamid Mohamad and PS Gill JJCA have read this judgment in draft and have expressed their agreement with it.